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H.R. 16373, Amends the Freedom of Information Act,
Section 552 of Title 5, U. S. C.,
To Grant Individuals Access to
Government Records Concerning Them

H.R. 16373 permits an individual to have access to Government records containing personal information concerning him for the purpose of supplementing and correcting any erroneous information. Agencies are required to maintain proper safeguards over the information and may not non-routinely disseminate the information without the written permission of the individual.

The Government Operations Committee, recognizing that CIA files are particularly sensitive, granted CIA, in subsection (j)(1) of the bill a general exemption from all but subsections (b) and (e)(2)(A) through (F). These subsections require CIA to publish annually in the Federal Register the nature, categories of persons involved, and purposes of the systems of records maintained. Under the bill records would be disclosed only to officers of CIA who have a need to know and dissemination to other agencies would be made only in accordance with an established routine purpose (National Security Act of 1947).

A floor amendment may be introduced to strike the general exemption for CIA files and limit the general exemption to categories of information believed to be "national defense and foreign policy." The exact language

of the amendment will not be known until introduced. The floor amendment would not adequately cover CIA files for the following reasons:

- a. Intelligence sources and methods are recognized by the Congress as inherently sensitive under the National Security Act of 1947 which makes the Director of Central Intelligence responsible for their protection and it could be argued that they may not meet the test of national defense or foreign policy.
- b. All systems of CIA files directly involve or are very closely related to intelligence sources and methods.
- c. The Central Intelligence Agency Act of 1949, section 403g, in furtherance of the responsibilities of the Director of Central Intelligence to protect sources and methods exempts the Agency from the provisions of any law which requires the disclosure of organization, names, and numbers of personnel, etc. H.R. 16373 would be in conflict with the National Security Act of 1947 and the CIA Act of 1949, and the bill cannot impliedly repeal them.

93D CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } No. 93-1416

PRIVACY ACT OF 1974

OCTOBER 2, 1974.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. MOORHEAD of Pennsylvania, from the Committee on Government Operations, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 16373]

The Committee on Government Operations, to whom was referred the bill (H.R. 16373) to amend title 5, United States Code, by adding a section 552a to safeguard individual privacy from the misuse of Federal records and to provide that individuals be granted access to records concerning them which are maintained by Federal agencies, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment to the text of the bill strikes out all after the enactment clause and inserts a substitute text which appears in italic type in the reported bill.

DIVISIONS OF THE REPORT

Summary and purpose.

Background.

Committee action and vote.

Discussion:

Definitions.

Conditions of disclosure.

Accounting of certain disclosures.

Access to records.

Agency requirements.

Agency rules.

Civil remedies.

Rights of legal guardians.

Criminal penalties.

General exemptions.

may recover actual damages and costs and attorney fees if the agency's infraction was willful, arbitrary, or capricious.

10. Makes unlawful possession of or disclosure of individually identifiable information by a government employee punishable by a fine not to exceed \$5,000.

11. Provides that any person who requests or obtains such a record by false pretenses is subject to a fine of not to exceed \$5,000.

12. Sets forth statutory provisions relating to archival records; requires annual report from President on agency uses of exemptions; and provides that the law would become effective 180 days following enactment.

Hearings and investigations by subcommittees of the House Government Operations Committee over the past decade have revealed major violations of the privacy of individual American citizens by the Federal Government in its growing collection and use of personal data furnished by citizens for specific governmental purposes. Accelerated data sharing of such personally identifiable information among increasing numbers of Federal agencies through sophisticated automated systems, coupled with the recent disclosures of serious abuses of governmental authority represented by the collection of personal dossiers, illegal wiretapping, surveillance of innocent citizens, misuse of income tax data, and similar types of abuses, have helped to create a growing distrust, or even fear of their Government in the minds of millions of Americans.

H.R. 16373 provides a series of basic safeguards for the individual to help remedy the misuse of personal information by the Federal Government and reassert the fundamental rights of personal privacy of all Americans that are derived from the Constitution of the United States. At the same time, it recognizes the legitimate need of the Federal Government to collect, store, use, and share among various agencies certain types of personal data. This information includes income tax returns, Social Security records, veterans' medical and service records, civil service records, census data, economic statistics, governmental payroll records, law enforcement records, and other similar types of personally identifiable information about many millions of individuals.

H.R. 16373 provides that each agency covered by it administer its provisions independently, subject to the guidelines created by law and agency regulations implementing each operative part. Regulations are subject to standard rulemaking requirements of the Administrative Procedure Act (title 5, section 553, United States Code).

Like the Freedom of Information Act, H.R. 16373 also recognizes that certain areas of Federal records are of such a highly sensitive nature that they must be exempted from its provisions. The measure provides a general exemption from most of the bill's operative provisions to systems of records maintained by the Central Intelligence Agency and those used for criminal justice purposes such as computerized systems of the National Crime Information Center (NCIC), maintained by the Federal Bureau of Investigation, and other Federal criminal history file systems. Other committees of the Congress

have been studying this aspect of the privacy issue and currently have pending separate bills to provide safeguards in the criminal justice information area.

H.R. 16373 also permits the head of an agency to exempt certain other types of record systems, subject to his written determination of the reasons to be published in the *Federal Register*. These include systems of records that—(1) are subject to withholding under section 552(b) (1) of the Freedom of Information Act, relating to classified national defense or foreign policy information; (2) consist of certain types of investigatory material compiled for law enforcement purposes; (3) relate to protective services rendered the President of the United States and others, such as those records maintained by the Secret Service; and (4) are required by other statutes to be maintained and used solely as statistical reporting or research records.

Under the provisions of this legislation, however, Federal agencies (even those to which these exemptions apply) would be required to publish annually in the *Federal Register* certain identifying characteristics about virtually all systems of records under their control from which personally identifiable information could be retrieved. The objective of the bill is that there be no "secret" government system of records containing personal information about individuals.

Also like the Freedom of Information Act, H.R. 16373 provides for the exercise of civil remedies by individuals against the Federal Government through the Federal courts to enforce their rights, with the burden of proof resting on the government. Provision is made for the collection of actual damages by the individual against the government if the infraction was willful, arbitrary, or capricious, and the court may award the complainant court costs and attorney fees in its discretion. Penalties are also provided for the unauthorized knowing and willful disclosure of individually identifiable material by a government officer or employee by a fine of not more than \$5,000. Criminal penalties and fines would be imposed on persons requesting or obtaining any such individually identifiable record under false pretenses.

H. R. 16373 attempts to strike that delicate balance between two fundamental and conflicting needs—on the one hand, that of the individual American for a maximum degree of privacy over personal information he furnishes his government, and on the other, that of the government for information about the individual which it finds necessary to carry out its legitimate functions.

BACKGROUND

Public and Congressional concern over an increasing trend within our government to snoop into virtually every segment of our society is not new.

George Orwell's famous book *1984*, published a generation ago, focused public attention on the fictional fishbowl existence of human life in the "Big Brother" era and the potential threats to any free system posed by some political-technical-social innovations.

During the "cold war" period of the late 1940s and 1950s, widespread abuses engulfed various governmental and private efforts to ferret out alleged "subversives." Intellectual dissent was driven some-

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capricious, the government shall be liable for reasonable attorney fees and costs.

In addition to the award of fees and costs, the United States is liable for actual damages resulting from the willful, arbitrary, or capricious action of an agency in a suit brought under section (g) (1) (B) or (C).

Venue lies in the district where the complainant resides or has his place of business, where the agency records are situated, or in the District of Columbia. The statute of limitations is two years from the date upon which the cause of action arises, except for cases in which the agency has materially or willfully misrepresented any information required to be disclosed and when such misrepresentation is material to the liability of the agency. In such cases the statute of limitations is two years from the date of discovery by the individual of the misrepresentation.

RIGHTS OF LEGAL GUARDIANS

Section (h) provides that the parent of any minor, or the legal guardian of any individual who has been declared to be incompetent due to physical or mental incapacity or age by a court of competent jurisdiction may act on behalf of such individual with respect to his rights under this law.

CRIMINAL PENALTIES

Any officer or employee of the United States who has access to or possession of a record the disclosure of which is prohibited by the Act or by the rules made pursuant to this act and who knowingly discloses such information to a person or agency not entitled to receive such information is liable for a fine of not more than \$5,000.

Any person who knowingly and willfully obtains a record concerning an individual from any agency under false pretenses is liable for a fine of not more than \$5,000.

GENERAL EXEMPTIONS

Section 552a(j) would permit the head of any agency to exempt certain systems of records within his agency from virtually all the requirements of the legislation. Only records maintained by the Central Intelligence Agency and criminal justice records could be so exempted. Even they would be subject to the requirements relating to conditions of disclosure (section 552a(b)) and publication of notice of the existence and character of each system of records (section 552a(c) (2) (A) through (F)).

The Committee believes that such a broad exemption is permissible for these two types of records because they contain particularly sensitive information. C.I.A. files may include the most delicate information regarding national security. Criminal justice records are so different in use from other kinds of records that their disclosure should be governed by separate legislation.

The Committee has made certain, however, that a notice of the existence and character of these systems of records must be published at least annually in the *Federal Register*. We believe that the government should maintain no secret system of records about its own citizens. We have also made sure that systems may be exempted from certain re-

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The Committee to require the C personal records those agencies make available out clearly in missions.

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quirements of the bill only after the head of an agency promulgates rules which are open to public comment before they become effective. By this means, people will be afforded an opportunity to make their views on proposed exemptions known to the appropriate agencies, and agencies will be able to modify their decisions taking those views into account.

The Committee also wishes to stress that this section is not intended to require the C.I.A. and criminal justice agencies to withhold all their personal records from the individuals to whom they pertain. We urge those agencies to keep open whatever files are presently open and to make available in the future whatever files can be made available without clearly infringing on the ability of the agencies to fulfill their missions.

SPECIFIC EXEMPTIONS

Section 552a(k) would permit the head of any agency to exempt certain systems of records within his agency from some of the requirements of the legislation. The requirements from which these systems could be exempted are primarily those dealing with access by individuals to records about themselves. Only four categories of systems of records could be so excluded:

1. Information classified in the interest of national defense or foreign policy;

2. Investigatory material compiled for law enforcement purposes, except for information that is contained in criminal justice records (which are subject to section 552a(j)) and information that is open to public inspection under section 552 of this title, (the Freedom of Information Act);

3. Secret Service files maintained in connection with providing protective services to the President or other individuals; and

4. Records required by statute to be maintained and used solely as statistical research or reporting records.

Sound reasons of public policy justify exempting each of these groups of records from individual access.

1. In some cases, disclosure of classified information, even to the person to whom it pertains, could damage the national defense or foreign policy, for the information would no longer be subject to all the security controls it is properly subject to as classified matter.

2. Individual access to certain law enforcement files could impair investigations, particularly those which involve complex and continuing patterns of behavior. It could alert subjects of investigations that their activities are being scrutinized, and thus allow them time to take measures to prevent detection of illegal action or escape prosecution.

3. Access to Secret Service intelligence files on certain individuals would vitiate a critical part of Secret Service work which was specifically recommended by the Warren Commission that investigated the assassination of President Kennedy and funded by Congress.

4. Disclosure of statistical records in most instances would not provide any benefit to anyone, for these records do not have a direct effect on any given individual; it would, however, interfere with a legitimate, Congressionally-sanctioned activity.